

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission (Commission) hereby amends Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

The purpose of this rule making is to adopt recent federal amendments to the PSD program related to greenhouse gas emissions. The amendments match federal regulations and streamline Iowa’s PSD program by providing additional opportunities for plantwide applicability limitations (PALs) for greenhouse gases.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 20, 2013, as **ARC 0648C**, and a public hearing was held on April 23, 2013, in Windsor Heights, Iowa. The Department of Natural Resources (Department) received no comments at the public hearing and received no written comments by the April 23 public comment deadline. The Commission made no changes to these amendments from those published under Notice of Intended Action.

The Commission proposed in the preamble to the Notice of Intended Action that the final amendments would become effective immediately upon filing because of urgency expressed by stakeholders to expedite the rule making. However, an expedited filing is no longer necessary. Consequently, these amendments are Adopted and Filed, instead of Adopted and Filed Emergency After Notice, and the amendments will become effective 35 days after publication in the Iowa Administrative Bulletin (July 17, 2013).

Background (PSD Program and PALs)

New source review (NSR) is a federal term for review and preconstruction permitting of new or modified stationary sources of air pollution. The PSD program is a component of NSR that includes procedures to ensure that air quality standards are maintained. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control emissions. The permit requires the facility to apply Best Available Control Technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control. The specific nature of the project determines if it is subject to PSD requirements for greenhouse gases.

A PAL permit is a voluntary program that is available to qualifying facilities and that establishes plantwide emission limits on a pollutant-by-pollutant basis. If a facility can maintain its overall emissions of a particular pollutant below the PAL level, the facility can make changes at the facility without triggering PSD review.

Need for Rule Changes

The amendments implement recent changes that the U.S. Environmental Protection Agency (EPA) made to the federal PSD regulations. The federal amendments were published in the Federal Register on July 12, 2012, and became effective on August 13, 2012 (available at <http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16704.pdf>). The amendments to state rules match the federal amendments and provide additional opportunities for new and existing facilities to apply for PALs for greenhouse gases.

The new PAL provisions offer maximum regulatory flexibility to affected facilities that choose to apply for PAL permits and that can maintain emissions of greenhouse gases below the PAL levels. Obtaining and complying with a PAL permit allows a facility to make changes without triggering PSD review. A PAL permit allows a facility to respond more rapidly to market conditions, while still generally ensuring that the environment is protected from adverse impacts from the changes.

A PAL permit may also result in environmental benefit by providing the public with knowledge of the long-term emissions from the facility because PAL permits require enhanced monitoring, record keeping, and reporting to demonstrate compliance. The Department anticipates that the reduced regulatory burden

associated with the PAL permitting process will offset any costs of enhanced monitoring, record-keeping, and reporting requirements.

The Department has received an application for a PAL permit from one facility, the University of Iowa (U of I). U of I has requested a PAL permit for greenhouse gases under the new federal amendments. Other companies have also inquired about the availability of a PAL permit for greenhouse gases since the federal amendments became effective.

Consequences of Not Amending State Rules

Because Iowa has its own federally approved PSD program, the Department cannot issue a final PAL permit including the new greenhouse gas provisions until these provisions are adopted into state administrative rules. Without final rules, applicants would need to apply to the EPA to use the new PAL provisions. EPA would likely take significantly longer than the Department to issue a PAL permit.

Additionally, if the Commission did not adopt these amendments, state rules for PSD would continue to be inconsistent with federal regulations, and would also be more stringent than federal regulations, which is prohibited by statute (Iowa Code section 455B.133(4)).

Adopted Amendments

Item 1 amends the PSD program rules to revise the definition of “subject to regulation” in subrule 33.3(1). The amendment adds provisions specifying that greenhouse gases (GHGs) are not “subject to regulation” if the stationary source maintains its total sourcewide emissions below the GHG PAL level and meets all of the requirements for the PAL program and the requirements specified in a PAL permit. The amendment matches the changes the EPA made to federal regulations published on July 12, 2012 (see 40 Code of Federal Regulations (CFR) 52.21(b)(49)(i)). The GHG PAL level and PAL requirements are adopted by reference in rule 567—33.9(455B).

Item 2 amends rule 567—33.9(455B) to revise the adoption by reference of the federal PAL provision. The amendment adopts by reference the new PAL provisions for GHGs that EPA published on July 12, 2012 (see 40 CFR 52.21(aa)).

The amendments allow the Department to approve PALs and issue PAL permits for GHGs on either a mass basis or using the specified calculation for “tons per year carbon dioxide equivalent emissions (CO₂e)” basis, for any existing major stationary source or any existing GHG-only source.

The Department has determined after analysis and review that no adverse impact on jobs exists. The amendments reduce the regulatory burden on affected facilities and provide additional flexibility to facilities that choose to apply for a PAL permit. The amendments could have a positive impact on jobs in Iowa by increasing Department collaboration with job creators to reduce the regulatory burden and by providing additional flexibility for the regulated community, while still ensuring that Iowa’s air quality is protected and maintained. The ability to respond more rapidly to market conditions facilitates economic growth and associated job creation.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments will become effective on July 17, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule **33.3(1)**, definition of “Subject to regulation,” as follows:

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended on ~~May 7, 2010~~ through September 15, 2011) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs “4” and “5.” “5,” and shall not be subject to regulation if the stationary source maintains its total sourcewide emissions below the GHG PAL level, meets the requirements in rule 567—33.9(455B), and complies with the PAL permit containing the GHG PAL.

2. For purposes of paragraphs “3,” “4,” and “5,” the term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009). For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO₂e.

3. to 5. No change.

ITEM 2. Amend rule 567—33.9(455B) as follows:

567—33.9(455B) Plantwide applicability limitations (PALs). This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) as amended through ~~November 29, 2005~~ July 12, 2012, are adopted by reference, except that the term “Administrator” shall mean “the department of natural resources.”

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/12/13.